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Form PTO-1594  
(Rev. 10/02)  
OMB No. 0651-0027 (exp. 6/30/2005)  
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U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

MBC Acquisition Corp.

- ☐ Individual(s)      ☐ Association  
☐ General Partnership      ☐ Limited Partnership  
☒ Corporation-State  
☐ Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

## 3. Nature of conveyance:

- ☐ Assignment      ☐ Merger  
☒ Security Agreement      ☐ Change of Name  
☐ Other \_\_\_\_\_

Execution Date: \_\_\_\_\_

## 2. Name and address of receiving party(ies)

Name: Regions Bank

Internal

Address: \_\_\_\_\_

Street Address: 4101 Hillsboro Road

City: Nashville State: TN Zip: 37215

- ☐ Individual(s) citizenship \_\_\_\_\_  
☐ Association \_\_\_\_\_  
☐ General Partnership \_\_\_\_\_  
☐ Limited Partnership \_\_\_\_\_  
☒ Corporation-State  
☐ Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached? ☐ Yes ☐ No

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FINANCE SECTION

OFFICE OF PUBLIC RECORDS

## 4. Application number(s) or registration number(s):

A. Trademark Application No.(s) \_\_\_\_\_

B. Trademark Registration No.(s) 1844651

Additional number(s) attached ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: David B. Gray

Internal Address: Hix &amp; Gray, PLC

Street Address: 315 Deaderick Street

1620 AmSouth Center

City: Nashville State: TN Zip: 37238

## 6. Total number of applications and registrations involved: \_\_\_\_\_

1

7. Total fee (37 CFR 3.41).....\$ 40.00

- ☒ Enclosed  
☐ Authorized to be charged to deposit account

## 8. Deposit account number: \_\_\_\_\_

DO NOT USE THIS SPACE

## 9. Signature.

David B. Gray

Name of Person Signing

*David B. Gray*  
Signature

7/14/03  
Date

Total number of pages including cover sheet, attachments, and document: \_\_\_\_\_

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

08/28/2003 ESDOPER 00000013 1844651

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TRADEMARK  
REEL: 002813 FRAME: 0728

## **TRADEMARK SECURITY AGREEMENT**

This Trademark Security Agreement ("Agreement") entered into the 23<sup>rd</sup> day of May, 2003, by and between **MBC Acquisition Corp.** ("Grantor"), and **Regions Bank** ("Lender"), a banking corporation.

### **WITNESSETH:**

**WHEREAS**, Lender has agreed to extend credit to MBC Acquisition Corp., on certain terms and conditions; and

**WHEREAS**, one condition to Lender's agreement to extend credit to Grantor is that Lender must be provided a first priority perfected security interest in Grantor's interest in a certain federally registered trademark owned by Grantor and which will be registered in the name of Grantor upon the recordation of assignment documents with the United States Patent and Trademark Office (the "PTO").

**NOW, THEREFORE**, as an inducement to cause Lender to extend credit to Grantor, and for other valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

1. **Definition of Secured Indebtedness.** As used herein, "Secured Indebtedness" shall mean all present and future debts and other obligations of Grantor to Lender, whether arising by contract, tort, guaranty, overdraft, or otherwise; whether or not the advances or events creating such debts or other obligations are presently foreseen; whether such obligations were originally payable to Lender or are acquired by Lender from another person or entity; and regardless of the class of the debts or other obligations, be they otherwise secured or unsecured. Without limiting the foregoing, the Collateral shall specifically include, without limitation, all of Debtor's rights, title and interest in and to that Trademark entitled "Healthbreak," registered with the PTO as Registration No. 1844651, as further described on Exhibit A, attached hereto and incorporated herein by reference (the "Trademark"), together with all goodwill, income, royalties, licenses, and all other records, warranties, monies and all other proceeds and right pertaining thereto.

2. **Assignment; Security Interest.** To secure the payment of Secured Indebtedness, Grantor hereby assigns to Lender and grants Lender a security interest in all of Grantor's right, title, interest in and to the Trademark, together with the following:

- (a) The name of the Trademark;
- (b) Any and all versions of the Trademark, and any and all trademarks and service marks derived therefrom;
- (c) Any United States and worldwide trademarks arising from the Trademark;
- (d) All royalty interests of Grantor arising out of licenses of the Trademark;

- (e) Any and all other rights in the Trademark that Grantor now has or to which it may become entitled under existing or subsequently enacted federal, state or foreign laws;
- (f) Any and all existing or potential causes of action for infringement of the Trademark, past, present and future, and all the proceeds from the foregoing accrued and unpaid and hereafter accruing;
- (g) All contracts associated with the Trademark;
- (h) All licenses issued with respect thereto;
- (i) All other materials relating to the Trademark possessed or owned by Grantor, but not specifically herein mentioned.

The Trademark and all of the foregoing rights are referred to herein collectively as the "Collateral."

3. **Warranties.** Assignor hereby warrants, represents, covenants and agrees as follows:

- (a) **Title.** Grantor has good and marketable title to and is the sole and exclusive owner of the Collateral;
- (b) **No Other Encumbrances.** The Collateral has not been assigned, pledged or otherwise transferred or encumbered, nor has any security interest, lien, mortgage or other encumbrance been granted therein, to secure indebtednesses or otherwise, which security interest has not been released;
- (c) **Valid Interest.** Subject to the proper filings by Lender with the PTO and state and local authorities, this Agreement provides Lender with a valid first priority security interest in the Collateral;
- (d) **Trademark Registration.** A certificate of registration in respect of the Trademark has been issued by the United States Patent & Trademark Office. The registration of the Trademark is in full force and effect, and will be, upon recordation of assignment documents with the PTO, in the name of Grantor. No action has been taken or omitted which would destroy or impair protection of the Trademark under the United States Trademark Law;
- (e) **Prior Indebtedness.** Grantor does not have any debt, liability, or obligation of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due, with respect to or affecting the Trademark;
- (f) **No Power of Attorney.** No person holds a power of attorney on behalf of Grantor or any predecessor of Grantor, other than legal counsel responsible for prosecuting and maintaining the registration of the Trademark, affecting, directly or indirectly, the interests which are the subject matter of this Agreement; and
- (g) **No Breach of Agreements.** All the agreements between Grantor or any predecessor of Grantor with respect to the Trademark are in full force and effect. Grantor and any predecessor of Grantor have performed all of their obligations thereunder and there exists no breach of or default with respect thereto and all of such agreements grant to Grantor the right to assign all of Grantor's right, title and interest in the respective agreements. Grantor has

not received any notice that any party to any of such agreements intends to cancel or terminate any of such agreements.

4. **No Other Liens.** Grantor shall not, without the prior express written consent of Lender, sell, convey, transfer, set over, or grant a security interest in the Trademark or any interest therein or permit any lien or security interest to attach to the same except that created by this Agreement, or do or allow to be done any act which might impair the security interest of Lender therein; provided, however, as long as no default exists hereunder, Grantor may commercially exploit (but not encumber or dispose of) the Collateral in the ordinary course of business and in accordance with ordinary and accepted customs of the industry.

5. **Collection Rights of Lender.** Whether or not a default exists hereunder, Lender may at its option, notify any or all obligors under any licensing agreement pertaining to Trademark or any obligor under any other of the Collateral to make all payments due Grantor directly to Lender for the account of Grantor. Grantor hereby directs all obligors so notified to comply with Lender's instructions without the need of confirmation from Grantor, and Grantor agrees that all such obligors shall receive full credit for any payments forwarded to Lender.

6. **Recitals.** Grantor warrants and agrees that the recitals set forth at the beginning of this Agreement are true.

7. **No Burdensome Agreements.** Grantor warrants that Grantor is not a party to any contract or agreement and is not subject to any contingent liability that does or may impair Grantor's ability to perform under the terms of this Agreement. Grantor further warrants that the execution and performance of this Agreement will not cause a default, acceleration or other event under any other contract or agreement to which Grantor or any property of Grantor is subject, and will not result in the imposition of any charge, penalty, lien or other encumbrance against any of Grantor's property, except in favor of Lender.

8. **Legal and Binding Agreement.** Grantor warrants that the execution and performance of this Agreement will not violate any judicial or administrative order or governmental law or regulation, and that this Agreement is valid, binding and enforceable in every respect according to its terms.

9. **No Consent Required.** Grantor warrants that Grantor's execution, delivery and performance of this Agreement do not require the consent of or the giving of notice to any third party including, but not limited to, any other lender, governmental body or regulatory authority.

10. **No Default.** Grantor warrants that, as of the execution of this Agreement, no default exists hereunder and no condition exists which, with the giving of notice, the passing of time, or both, would constitute such a default.

11. **Default Defined.** The occurrence of any one or more of the following events shall constitute a default under this Agreement:

- (a) Monetary Default. The failure of Grantor to timely pay any amount due Lender under the Secured Indebtedness or under any other obligation to Lender;
- (b) Breach of Covenant. The failure of Grantor or any other party to perform or observe any obligation or covenant made with respect to the Secured Indebtedness;
- (c) Breach of Warranty. Lender's discovery that any representation or warranty in connection with this Agreement or the Secured Indebtedness is materially false; and
- (d) Default Under Other Document. The occurrence of a default under the terms of any document evidencing, securing, or otherwise pertaining to the Secured Indebtedness.

12. **Remedies Upon Default.** Upon the occurrence of a default, as defined above, Lender may pursue any or all of the following remedies, without any notice to Grantor, except as required below:

- (a) Control of records. Lender may take possession of any or all of the records pertaining to the Trademark. Grantor agrees that, upon default and request by Lender, Grantor shall make available to Lender all records pertaining to the Trademark and shall disclose the location and custodian of all license fees and proceeds of the Trademark, which requirement shall be specifically enforceable;
- (b) Recovery of Royalties. Lender may recover any or all license fees of the Trademark from any bank or other custodian who may have possession thereof. Grantor hereby authorizes and directs all custodians of Grantor's assets to comply with any demand for payment made by Lender pursuant to this Assignment, without the need of confirmation from Grantor and without making any inquiry as to the existence of a default hereunder or any other matter;
- (c) Notice to Obligors. Lender may notify any or all obligors under any licensing agreement or any other contract or agreement pertaining to the Trademark that subsequent payments thereunder should be made directly to Lender or its designated agent. Grantor hereby authorizes and directs all said obligors to comply with any such notice given by Lender, without the need of confirmation from Grantor and without making any inquiry as to the existence of a default hereunder or as to any other matter. Grantor shall give all of said obligors full credit for any such payments forwarded to Lender;
- (d) Enforcement of Rights of Collection. Lender may, but shall not be obligated to, take such measures as Lender may deem necessary in order to collect any or all of the license fees or proceeds from the Trademark and to perform or have performed any remaining obligations of Grantor under any contract rights pertaining to the Trademark. Without limiting the foregoing, Lender may institute any administrative or judicial action that it may deem

necessary in the course of collecting and enforcing any right to payment. Any administrative or judicial action or other action taken by Lender may be taken by Lender in its own name or in Grantor's name. Lender may compromise any disputed claims and may otherwise enter into settlements which compromises or settlements shall be binding upon Grantor. Grantor hereby appoints Lender as Grantor's attorney-in-fact for the purpose of taking any action in connection with the collection of royalties or proceeds from the Trademark, including the institution of administrative or judicial proceedings and the compromising of claims;

- (e) No Duty of Collection. Lender's giving of notice to an obligor or Lender's making of a demand for payment thereunder shall not obligate Lender to proceed with collection efforts by litigation or otherwise, and any duty of Lender to diligently pursue collection efforts as to any specific Composition shall arise only upon Lender's institution of legal or administrative proceedings for collection thereof;
- (f) Sale of Trademark. Lender may sell any or all of the Grantor's rights in the Trademark at private or public sale. Grantor agrees that five days prior notice of the time and place of any public sale and five days notice of the time after which efforts to sell at private sale will commence shall be considered commercially reasonable notice of such sales. Any public sale may be postponed to a different time and/or place by announcement at the originally scheduled time and place of sale, with no further advertisement of any kind being necessary. Any advertised sale can be cancelled, at Lender's discretion, either before or after the opening of bidding. Lender may purchase any or all of the Grantor's rights in the Trademark at any public sale;
- (g) Setoff. Lender may exercise its lien upon any right of setoff against any monies, items, credits, deposits or instruments that Lender may have in its possession and which belong to Grantor or to any other person or entity liable for the payment of any or all of the Secured Indebtedness;
- (h) Other Remedies. Lender may exercise any right that it may have under any other document evidencing or securing the Secured Indebtedness or otherwise available to Lender at law or equity; and
- (i) Application of Proceeds. All amounts received by Lender for Grantor's account by exercise of its remedies hereunder shall be applied as follows: First, to the payment of all expenses incurred by Lender in exercising its rights hereunder, including attorney's fees, and any other expenses due Lender from Grantor; Second, to the payment of all interest included in the Secured Indebtedness, in such order as Lender may elect; Third, to the payment of all principal included in the Secured Indebtedness, in such order as Lender may elect; and Fourth, surplus to Grantor or other party entitled thereto.

13. **Incorporation of Exhibits.** All Exhibits referred to in this Agreement are incorporated herein by this reference.

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14. **Indulgence Not Waiver.** Lender's indulgence in the existence of a default hereunder or any other departure from the terms of this Agreement shall not prejudice Lender's rights to declare a default or otherwise demand strict compliance with this Agreement.
15. **Cumulative Remedies.** The remedies provided Lender in this Agreement are not exclusive of any other remedies that may be available to Lender under any other document or at law or equity.
16. **Amendment and Waiver In Writing.** No provision of this Agreement can be amended or waived, except by a statement in writing signed by the party against which enforcement of the amendment or waiver is sought.
17. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of Grantor and Lender, except that Grantor shall not assign any rights or delegate any obligations arising hereunder without the prior written consent of Lender. Any attempted assignment or delegation by Grantor without the required prior consent shall be void. The provisions of this Section 17 shall not, however, impose any restrictions on the right of Grantor to license the right to use the Trademark to third parties.
18. **Entire Agreement.** This Agreement and the other written agreements between Grantor and Lender represent the entire agreement between the parties concerning the subject matter hereof, and all oral discussions and prior agreements are merged herein. Provided, if there is a conflict between this Agreement and any other document executed contemporaneously herewith with respect to the Secured Indebtedness, the provision most favorable to Lender shall control.
19. **Severability.** Should any provision of this Agreement be invalid or unenforceable for any reason, the remaining provisions hereof shall remain in full effect.
20. **Time of Essence.** Time is of the essence of this Agreement, and all dates and time periods specified herein shall be strictly observed, except that Lender may permit specific deviations therefrom by its written consent.
21. **Applicable Law.** The validity, construction and enforcement of this Agreement and all other documents executed with respect to the Secured Indebtedness shall be determined according to the laws of Tennessee applicable to contracts executed and performed entirely within that state, in which state this Agreement has been executed and delivered and, to the extent they are conflicting with the laws of Tennessee, the laws of the United States of America.
22. **Gender and Number.** Words used herein indicating gender or number shall be read as context may require.

23. **Captions Not Controlling.** Captions and headings have been included in this Agreement for the convenience of the parties, and shall not be construed as affecting the content of the respective paragraphs.

**EXECUTED** in duplicate originals the date first written above.

**THE UNDERSIGNED ACKNOWLEDGE A THOROUGH UNDERSTANDING OF THE TERMS OF THIS AGREEMENT AND AGREE TO BE BOUND THEREBY:**

**MBC ACQUISITION CORP.,** Grantor

By: 

Title: Pres/CEO

**REGIONS BANK,** Lender

By: 

Title: Senior Vice President

C:\Regions\MBC Acquisition\TrademarkAssignment



STATE OF TENNESSEE     )  
COUNTY OF DAVIDSON    )

Before me, a Notary Public of the County and State aforesaid, personally appeared Chalayne Sayes, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged herself to be the President/CEO of MBC Acquisition Corp., the within named bargainor, a Tennessee corporation, and that She, as such President/CEO being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by her self as President/CEO

Witness my hand, this the 20th day of May, 2003.

Hana Sheppard  
NOTARY PUBLIC

My Commission Expires: 1/27/07

STATE OF TENNESSEE     )  
COUNTY OF DAVIDSON    )

Before me, a Notary Public of the County and State aforesaid, personally appeared Robert H. Carpenter, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the Senior Vice President of Regions Bank, the within named bargainor, a banking corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the banking corporation by himself as Senior Vice President

Witness my hand, this the 23<sup>rd</sup> day of May, 2003.

Alan G. Morton  
NOTARY PUBLIC

My Commission Expires: Nov. 27, 2004

**EXHIBIT A**

Name of Trademark: HEALTHBREAK

Registration Number: 1844651

Registration Date: July 12, 1994

Serial Number: 74/006018

Secured Party: Regions Bank

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RECORDED: 08/27/2003

TRADEMARK  
REEL: 002813 FRAME: 0737